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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SANTHANA KRISHNAMACHARI, JOSEPH P. MEEHAN, and
ROBERT A. COHEN

Appeal 2007-2925
Application 09/976,338
Technology Center 2600

Decided: December 19, 2007

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO,
and MARC S. HOFF, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1, 2, 4-17, and 19-21. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants' claimed invention relates to the transmission of encoded video data using different modulation schemes in which the encoded video

data is partitioned into a plurality of streams. A determination of priority is made for each of the plurality of streams and a variable modulation rate is assigned based on the determined priority. (Specification 2-4).

We affirm.

Representative independent claim 1 is illustrative of the invention and it reads as follows:

1. A system for transmitting encoded video signals, comprising:
a system for partitioning encoded video data into a plurality of streams,
a system for determining a priority for each of a plurality of streams of encoded video data; and
a system for assigning a variable modulation rate to each stream of encoded video data based on the determined priority, wherein streams determined as having a relatively low priority are assigned a higher modulation rate than streams determined as having a relatively high priority, and wherein the variable modulation rate dictates a rate at which a stream of encoded video is to be transmitted over a transmission channel.

The Examiner relies on the following prior art reference to show unpatentability:

Radha	US 6,292,512 B1	Sep. 18, 2001
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Claims 1, 2, 4-17, and 19-21, all of the appealed claims, stand rejected under 35 U.S.C. § 102(e) as being anticipated by Radha.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C § 102(e), does Radha have a disclosure which anticipates the invention set forth in claims 1, 2, 4-17, and 19-21?

PRINCIPLES OF LAW

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at

issue “reads on” a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

ANALYSIS

With respect to the 35 U.S.C. § 102(e) rejection of representative independent claim 1 based on the Radha reference, the Examiner indicates (Answer 3-4) how the various limitations are read on the disclosure of Radha. In particular, the Examiner directs attention to the illustrations in Figures 6-11 of Radha as well as the accompanying description beginning at column 6, line 1 of Radha.

Appellants’ arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Radha so as to establish a *prima facie* case of anticipation. Appellants’ arguments initially focus on the contention that, in contrast to the claimed invention, Radha does not disclose that the assignment of a variable modulation rate, i.e., a transmission rate, to an encoded video data stream is dependent upon the encoding rate of the video data stream. According to Appellants (Br. 5), Radha discloses that the video data stream encoding rate is independent of the transmission rate.

After reviewing the disclosure of Radha in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer. We find ample evidence within the disclosure of Radha to support the Examiner's conclusion (Answer 3-6) that the transmission rates assigned to the encoded video data streams in Radha are related to the encoding rate. For example, as illustrated in Figure 6 of Radha, the base layer BL video stream is output from the controller 55, which is a video *rate* controller, and transmitted to a variable bandwidth network receiver at a bit rate of R_{BL} , which is the encoding bit rate assigned to the base layer BL at block 44. (Radha, col. 2, ll. 43-48 and col. 6, ll. 28-37).

We further find to be without merit Appellants' contention (Br. 5) that Radha does not disclose a determination of priority of the plural encoded video data streams, nor that any such priority determination is related to transmission rates. We agree with the Examiner (Answer 4) that a determination of priority takes place in Radha when the base layer is given high priority by assigning an encoding rate of R_{BL} to the base layer video data stream BL. As disclosed by Radha (col. 6, ll. 32-37), this encoding rate R_{BL} is set to a minimum value R_{MIN} which is the minimum bit-rate of the available bandwidth that can be accommodated by the variable-bandwidth network 43. The lower priority enhancement layer EI in Radha is in turn assigned a higher transmission rate of $R - R_{BL}$.

In view of the above discussion, since all of the claimed limitations are present in the disclosure of Radha, the Examiner's 35 U.S.C. § 102(e)

rejection of representative independent claim 1, as well as claims 2, 4-17, and 19-21 not separately argued by Appellants, is sustained.

CONCLUSION

In summary, we have sustained the Examiner's 35 U.S.C. § 102(e) rejection of all the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1, 2, 4-17, and 19-21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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